

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
	)	

### FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: **March 24, 2003**

Released: **March 25, 2003**

Comment Date: **30** days after publication in the Federal Register

Reply Comment Date: **45** days after publication in the Federal Register

By the Commission:

## I. INTRODUCTION

1. On March 11, 2003, the Do-Not-Call Implementation Act<sup>1</sup> (Do-Not-Call Act) was signed into law requiring the Federal Communications Commission (FCC or Commission) to issue a final rule in the above-captioned proceeding within 180 days of March 11, 2003 and to consult and coordinate with the Federal Trade Commission (FTC) to maximize consistency with the rule promulgated by the FTC in 2002.<sup>2</sup> The Do-Not-Call Act also requires the Commission to issue reports to Congress within **45** days after the promulgation of final rules in this proceeding, and annually thereafter. In this Further Notice of Proposed Rulemaking (Further Notice), **we** seek comment on these requirements.

## II. BACKGROUND

2. On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA)<sup>3</sup> in an effort to address a growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and even a risk to public safety.<sup>4</sup> The statute restricts the use of automatic telephone dialing systems, artificial and prerecorded messages, and telephone facsimile machines to send unsolicited advertisements. The TCPA specifically authorizes the Commission to “require the establishment and operation of a single national database to *compile a list of telephone numbers* of residential subscribers who

<sup>1</sup> Do-Not-Call Implementation Act, Pub. L. No. 108-10, **117 Stat. 557 (2003)**.

<sup>2</sup> **47 C.F.R. § 310.4(b)**.

<sup>3</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. **102-243**, 105 Stat. **2394 (1991)**, *codified at* **47 U.S.C. § 227**. The TCPA amended Title II of the Communications Act of **1934**, **47 U.S.C. § 201 et seq.**

<sup>4</sup> *See TCPA*, Section 2(5), *reprinted in* 7 FCC Rcd 2736 at **2744**.

object to receiving telephone solicitations.”<sup>5</sup> In 1992, the Commission adopted rules implementing the TCPA but declined to create a national database of telephone subscribers who do not wish to receive calls from telemarketers.<sup>6</sup> The Commission opted instead to implement an alternative scheme — one involving company-specific do-not-call lists. In 1995 and 1997, the Commission released orders addressing petitions for reconsideration of the *TCPA Order*.<sup>7</sup>

3. On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) and Memorandum Opinion and Order (MO&O)<sup>8</sup> seeking comment on, whether the Commission's rules need to be revised in order to carry out more effectively Congress's directives in the TCPA. Specifically, we sought comment on whether to revise or clarify our rules governing unwanted telephone solicitations<sup>9</sup> and the use of automatic telephone dialing systems,<sup>10</sup> prerecorded or artificial voice messages,<sup>11</sup> and telephone facsimile machines.<sup>12</sup> We also sought comment on the effectiveness of company-specific do-not-call lists.<sup>13</sup> In addition, we sought comment on whether to revisit the option of establishing a national do-not-call list<sup>14</sup> and, if so, how such action might be taken in conjunction with the FTC's proposal to adopt a national do-not-call list and with various state do-not-call lists.<sup>15</sup> In considering ways in which we might improve our TCPA rules, our goal is to enhance consumer privacy protections while avoiding imposing unnecessary burdens on the telemarketing industry, consumers, and regulators. Lastly, we sought comment on the effect proposed policies and rules would have on small business entities, including *inter alia* those who engage in telemarketing activities and those who rely on telemarketing as a method to solicit new business.<sup>16</sup>

4. On December 18, 2002, the FTC released an order establishing a national do-not-

<sup>5</sup> 47 U.S.C. § 227(c)(3).

<sup>6</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 at 8760-61, paras. 14-15.

<sup>7</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Order on Further Reconsideration, 12 FCC Rcd 4609 (1997).

<sup>8</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion & Order, 17 FCC Rcd 17459, CG Docket No. 02-278 and CC Docket No. 92-90. In the MO&O, the Commission closed and terminated CC Docket No. 92-90 and opened a new docket to address the issues raised in this proceeding.

<sup>9</sup> *NPRM*, 17 FCC Rcd at 17468-71, paras. 13-17

<sup>10</sup> *NPRM*, 17 FCC Rcd at 17473-76, paras. 23-27

<sup>11</sup> *NPRM*, 17 FCC Rcd at 17477-81, paras. 30-35

<sup>12</sup> *NPRM*, 17 FCC Rcd at 17482-84, paras. 37-40

<sup>13</sup> *NPRM*, 17 FCC Rcd at 17468-71, paras. 13-17

<sup>14</sup> *NPRM*, 17 FCC Rcd at 17487-96, paras. 49-66

<sup>15</sup> *See Telemarketing Sales Rule. Notice of Proposed Rulemaking*, Federal Trade Commission, 67 Fed. Reg. 4492 (January 30, 2002) (*FTC Notice*).

<sup>16</sup> *NPRM*, 17 FCC Rcd at 17497-501, paras. 70-80.

call registry and making other changes to its Telemarketing Sales Rule.<sup>17</sup> Congress approved funding for the FTC's do-not-call registry as part of the 2003 omnibus budget." Furthermore, the FTC has announced that it will begin to take registrations for a do-not-call registry on July 1, 2003, and that the registry will go into effect on October 1, 2003.<sup>19</sup>

## 111. DISCUSSION

5. In the Do-Not-Call Act, Congress requires this Commission to issue final rules in the above-captioned proceeding by September 7, 2003. The Do-Not-Call Act provides that the FCC shall consult and coordinate with the FTC to maximize consistency with the rule promulgated by the FTC.<sup>20</sup> Congress also requires the Commission to transmit a report on regulatory coordination to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation.\* The Commission is required to provide:

- (1) **An** analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;
- (2) **An** analysis of any inconsistencies between the rules promulgated by each Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and
- (3) Proposals to remedy any such inconsistencies.<sup>22</sup>

The Do-Not-Call Act also requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation, which includes:

- (1) **An** analysis of the effectiveness of the "do-not-call" registry as a national registry;
- (2) The number of consumers who have placed their telephone numbers on the registry;
- (3) The number of persons paying fees for access to the registry and the amount of such fees;
- (4) **An** analysis of the progress of coordinating the operation and enforcement of

<sup>17</sup> See *Telemarketing Sales Rule, final Rule*, Federal Trade Commission, 68 Fed. Reg. 4580 (Jan. 29, 2003). See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

<sup>18</sup> Consolidated Appropriations Resolution, 2003, H.J. Res. 2, Pub. L. No. 108-7 (2003).

<sup>19</sup> See <http://www.ftc.gov/bcp/online/edcams/donotcall/index.html>.

<sup>20</sup> *Do-Not-Call Act*, Section 3.

<sup>21</sup> The Do-Not-Call Act places an identical reporting requirement on the FTC

<sup>22</sup> *Do-Not-Call Act*, Section 4(a).

the “do-not-call” registry with similar registries established and maintained by the various States;

- (5) An analysis of the progress of coordinating the operation of the “do-not-call” registry with the enforcement activities of the Commission pursuant to the TCPA; and
- (6) A review of the enforcement proceedings by the Commission under the TCPA.”

6. As stated above, the Do-Not-Call Act requires the FCC, in the course of the above-captioned proceeding, to “maximize consistency” with FTC’s recent amendments to its Telemarketing Sales Rule.<sup>24</sup> We seek comment on how the FCC can maximize consistency with the FTC’s rule. We encourage commenters to review the rule promulgated by the FTC and to comment on how the FCC should consider amending its rules, given the new statutory directive. We seek comment on how the goals and principles identified in the Do-Not-Call Act should affect our implementation of the Act and how to harmonize the requirements of the Do-Not-Call Act with our statutory mandate in the TCPA. We also seek comment on how the FCC can best fulfill the reporting requirements contained in the statute. Parties are advised not to reiterate comments previously filed in this proceeding because any previously filed comments, to the extent they are relevant to adopting rules that maximize consistency with the FTC’s rules, will be duly considered. We note that nothing in this Further Notice modifies the Initial Regulatory Flexibility Analysis (IRFA) we published with the NPRM.<sup>25</sup> However, we welcome any additional comments on that LRFA that may arise because of this Further Notice.

#### IV. PROCEDURAL ISSUES

##### A. Ex Parte Presentations

7. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that presentations are disclosed as provided in the Commission’s rules.<sup>26</sup>

##### B. Filing of Comments and Reply Comments

8. We invite comment on the issues and questions set forth above. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 30 days after publication in the Federal Register, and reply

<sup>23</sup> *Do-Not-Call Act*, Section 4(b). The annual reporting requirement is in place for fiscal years 2003 to 2007. The Do-Not-Call Act places identical requirements on the FTC to submit annual reports.

<sup>24</sup> 47 C.F.R. § 310.4(b). We note that on December 20, 2002, the Consumer & Governmental Affairs Bureau issued a Public Notice extending the reply comment period in our TCPA proceeding until January 31, 2003, to ensure that all interested parties had ample opportunity to comment on possible Commission action in light of the FTC’s new rules. See 67 Fed. Reg. 78763 (Dec. 26, 2002).

<sup>25</sup> NPRM, 17 FCC Rcd 17459 at paras 69 – 80.

<sup>26</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a)

comments on or before 45 days after publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).


9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger, delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All** filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554.

10. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at [fcc504@fcc.gov](mailto:fcc504@fcc.gov).

**V. ORDERING CLAUSE**

11. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1-4, 227 and 303(r) of the Communications Act of **1934**, as amended; the Do-Not-Call Implementation Act, Pub. L. No. **108-10,117** Stat. **557;47** U.S.C. §§ **151-154,227** and 303(r); and 47 C.F.R. §§ 64.1200 and 64.1201 of the Commission's rules, the FURTHER NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

  
Marlene H. Dortch  
Secretary